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Supreme Court, U.S.
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No. 84-474

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1984

STATE OF CONNECTICUT,
Petitioner,

v.

JOHN C. COHANE,
Respondent.

ON WRIT OF CERTIORARI TO
THE SUPREME COURT OF CONNECTICUT

MEMORANDUM OPPOSING CERTIORARI

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"Respect for the independence of state courts, as well as avoidance of rendering advisory opinions, have been the cornerstone of this Court's refusal to decide cases where there is an adequate and independent state ground." Michigan v. Long, 103 S.Ct. 3469, 3475 (1983). Although the facts of this case, which are adequately described in the opinion of the Supreme Court of Connecticut below, would plainly mandate a reversal of Respondent's conviction as a matter of federal law, the decision of that Court is explicitly based on adequate and independent state grounds.

I. The reversal of the Respondent's conviction on the ground of the trial court's failure to instruct the jury that it could not draw any inference of guilt from Respondent's decision not to testify was expressly based on Conn. Const. art. first, §8. The Supreme Court of Connecticut explained that,

> Because the Connecticut constitution's protection against self-incrimination is at least as broad as the federal provision, we now hold that a criminal defendant has an independent right under article first, §8 of our constitution to the same "no-adverse-inference"

instruction upon proper and timely request.[6] See Michigan v. Long, ... 103 S.Ct. 3469 ... (1983); State v. Ferrell, 191 Conn. 37, 45 n.12, 463 A.2d 573 (1983).

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[6] In explaining the basis for the court's holding that the "no-adverse-inference" instruction is a component of the fifth amendment's protection against self-incrimination, Justice Stewart, writing for the majority in Carter, observed: "No judge can prevent jurors from speculating about why a defendant stands mute in the face of a criminal accusation, but a judge can, and must, if requested to do so, use the unique power of the jury instruction to reduce that speculation to a minimum." Carter v. Kentucky, 450 U.S. 288, 303 ... (1981). We find this reasoning equally apposite to the similar protection against self-incrimination embodied in article first, §8 of the Connecticut constitution.

State v. Cohane, 193 Conn. 474, 483, 479 A.2d 763, 770 (1984). (Petition at 10A.)

II. The reversal of Respondent's conviction on the ground of the misconduct of the State's Attorney in failing to disclose evidence favorable to the accused was based on two distinct adequate and independent state grounds:

(A) The reversal was based on Conn. Const. art. first, §8

> Although we rely on the United States Supreme Court's interpretation of the federal constitutional fair trial right in our analysis, our decision is based on both the fair trial right contained in the sixth amendment to the United States constitution and applied to the states by the fourteenth amendment and, independently, on the fair trial right guaranteed by article first, §8 of the Connecticut constitution. See Michigan v. Long, ... 103 S.Ct. 3469 ... (1983); State v. Ferrell, 191 Conn. 37, 45 n.12, 463 A.2d 573 (1983).

193 Conn. at 498-99 n.19, 479 A.2d at 777-78 n.19. (Petition at 25A-26A n.19.)

(B) The reversal on this ground was also based on the "inherent supervisory authority" of the Supreme Court of Connecticut. 193 Conn. at 499, 479 A.2d at 778. (Petition at 26A.) See State v. Ubaldi, 190 Conn. 559, 570-71, 462 A.2d 1001, 1008-09, cert. denied, 104 S.Ct. 280 (1983).

The decision of the Connecticut Supreme Court "indicates clearly and expressly that it is alternatively based on bona fide separate, adequate, and independent grounds." Michigan v. Long,

supra, 104 S.Ct. at 3476. Consequently, this Court should "not undertake to review the decision." Id.

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